

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

CHRISTOPHER BROWN,	:	
	:	
Petitioner,	:	Case No. 1:01cv840
	:	
vs.	:	JUDGE BECKWITH
	:	
PAT HURLEY, Warden,	:	MAGISTRATE JUDGE BLACK
	:	
Respondent.	:	

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**PETITIONER CHRISTOPHER BROWN'S OBJECTIONS  
TO THE MAGISTRATE'S REPORT AND RECOMMENDATION**

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Petitioner Christopher Brown objects to the Magistrate's Report and Recommendation filed on April 28, 2004. 28 U.S.C. 636(B)(1); Fed.R.Civ. P. 72(b). The attached memorandum explains Mr. Brown's objections.

Respectfully submitted,

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Ohio Public Defender

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## OBJECTIONS AND ARGUMENT

### **I. Mr. Brown objects to the Magistrate’s conclusion that there was sufficient evidence that Mr. Brown knowingly killed Stanley Small. Magistrate’s Report and Recommendation, pp. 9-10.**

This case presents a very narrow insufficient-evidence issue regarding whether Mr. Brown knowingly killed Stanley Small. Specifically, that issue is whether Mr. Small’s death was the “probable result” of Mr. Brown’s stabbing him once in the chest. As stated in Mr. Brown’s Traverse, and supported therein by peer-reviewed statistical analyses of emergency-room admissions, the likelihood of death from one or more stab wounds to the chest is in fact small—less than 2%. Magistrate Judge Perelman’s Report and Recommendation does not address this medical fact, and thus reaches an incorrect legal conclusion.

Because the chance of death from a stab wound was in fact very low, it is impossible to say that Mr. Brown knew when he stabbed Mr. Small that the victim would “probably” die from the wound he inflicted. Because the State of Ohio has not established, and cannot establish, that Mr. Brown knowingly caused another’s death, his conviction for voluntary manslaughter is not supported by sufficient evidence, and habeas corpus relief must be granted. *Jackson v. Virginia*, 443 U.S. 307 (1979).

### **II. Mr. Brown objects to the Magistrate’s recommendation that his petition for writ of habeas corpus be denied with prejudice. (R & R, p. 10). Mr. Brown further objects to the Magistrate’s recommendation that a certificate of appealability should not issue. (R & R, p. 10-11). Mr. Brown also objects to the Magistrate’s recommendations that an appeal of any Order adopting the Report and Recommendation would not be taken in good faith, and that Mr. Brown should be denied leave to appeal *in forma pauperis*. (R & R, p. 11).**

“Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”

*Slack v. McDaniel* (2000), 529 U.S. 473, 484. If the Report and Recommendation is followed, reasonable jurists would find this Court's disposition of Mr. Brown's claim debatable.

Further, Mr. Brown should be allowed to proceed *in forma pauperis* if he provides the proper documentation. For the reasons shown above, an appeal from an Order adopting the Magistrate's Report and Recommendation would not be frivolous and would be in good faith.

### CONCLUSION

Mr. Brown respectfully requests that this Court find merit in his objections, reject the Magistrate's Report and Recommendation, and issue a writ of habeas corpus.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 2004, a copy of the foregoing OBJECTIONS TO THE MAGISTRATE'S REPORT AND RECOMMENDATION was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

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